

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

12 Cr. 863 (LAP)

5 KEVIN HENDERSON,

Plea

6 Defendant.

7 -----x
8 New York, N.Y.
9 July 21, 2014
3:10 p.m.

10 Before:

11 HON. LORETTA A. PRESKA

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

DANIEL B. TEHRANI

17 Assistant United States Attorney

18 JOSHUA DRATEL

19 Attorney for Defendant
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1 (Case called)

2 MR. TEHRANI: Good afternoon, your Honor. Daniel
3 Tehrani for the government.

4 MR. DRATEL: Good afternoon, Joshua Dratel for Mr.
5 Henderson, who is standing beside me.

6 THE COURT: Thank you. Good afternoon. Am I correct,
7 Mr. Dratel, that Mr. Henderson has decided he wishes to change
8 his plea?

9 MR. DRATEL: That is correct, your Honor. He wishes
10 to enter a plea of guilty to Count One.

11 THE COURT: Mr. Henderson, would you stand and raise
12 your right hand.

13 (Defendant sworn)

14 THE COURT: Sir, do you understand that you are now
15 under oath and if you answer my questions falsely, your answers
16 may later be used against you in a prosecution for perjury or
17 the making of a false statement?

18 THE DEFENDANT: Yes.

19 THE COURT: How old are you, sir?

20 THE DEFENDANT: 33 years old, ma'am.

21 THE COURT: Where were you born?

22 THE DEFENDANT: Brooklyn, New York.

23 THE COURT: So you're a citizen of the United States?

24 THE DEFENDANT: Yes.

25 THE COURT: You read, write, speak, and understand

1 English, is that right?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: How far did you go in school, sir?

4 THE DEFENDANT: Seventh grade.

5 THE COURT: Are you currently or have you recently

6 been under the care of a doctor or a psychiatrist?

7 THE DEFENDANT: Yes.

8 THE COURT: For what ailments, please, sir?

9 THE DEFENDANT: A death that I had.

10 THE COURT: I'm sorry?

11 THE DEFENDANT: A death that I had.

12 MR. DRATEL: A death in the family, your Honor, very

13 recently.

14 THE COURT: You're seeing a psychologist?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you on any medication from the

17 psychologist, sir?

18 THE DEFENDANT: No.

19 THE COURT: Thank you. Have you been hospitalized or

20 treated recently for alcoholism, narcotic addiction, or any

21 other kind of drug abuse?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Have you ever been treated for any form of

24 mental illness other than the recent death in your family?

25 THE DEFENDANT: No.

1 THE COURT: Are you currently under the influence of
2 any substance, such as alcohol, drugs, or any medication that
3 might affect your ability to understand what you are doing here
4 in court today?

5 THE DEFENDANT: No.

6 THE COURT: Do you feel well enough to understand what
7 you are doing here in court today?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, sir, have you received a copy of the
10 indictment against you S2 12 Cr. 863?

11 THE DEFENDANT: Yes.

12 THE COURT: Have you gone over it with Mr. Dratel?

13 THE DEFENDANT: Yes.

14 THE COURT: Has he explained to you the charges
15 against you?

16 THE DEFENDANT: Yes.

17 THE COURT: Have you told him everything you know
18 about the matters that are set out in the indictment?

19 THE DEFENDANT: Yes.

20 THE COURT: You haven't held anything back from him,
21 have you, sir?

22 THE DEFENDANT: No.

23 THE COURT: Thank you.

24 Counsel, do I correctly understand that there is a an
25 agreement between the government and Mr. Henderson that is

1 dated July 11, 2014 and signed July 21, 2014?

2 MR. TEHRANI: That's correct, your Honor.

3 MR. DRATEL: Yes, your Honor.

4 THE COURT: Mr. Tehrani, would you be kind enough to
5 summarize, please, the terms and conditions of the agreement.

6 MR. TEHRANI: Certainly, your Honor. Pursuant to the
7 plea agreement, the government agrees to accept a guilty plea
8 to the lesser included offense of conspiracy to distribute and
9 possess with intent to distribute crack cocaine in violation of
10 Title 21, United States Code, section 841(b)(1)(C) and 846. In
11 the indictment the defendant is charged with a violation of
12 Title 21, United States Code, section 841(b)(1)(B).

13 The parties have agreed on a stipulated guideline
14 range, which in this case is 151 to 188 months' imprisonment.
15 The parties agree that that is an agreement between the parties
16 and it does not bind either probation or the Court. The
17 defendant has agreed that he will not appeal or otherwise
18 collaterally challenge any sentence within or below the
19 guidelines range of 151 to 188 months' imprisonment.

20 THE COURT: Thank you.

21 Mr. Henderson, are those the terms and conditions of
22 the agreement as you understand them?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you recall, sir, that in this agreement
25 you and the government have agreed to a stipulated guidelines

1 range of 155 to 188 months' imprisonment?

2 MR. DRATEL: 151, your Honor.

3 THE COURT: 151. Thank you for that correction, Mr.
4 Dratel.

5 THE DEFENDANT: Yes.

6 THE COURT: Let me ask you again, sir, just so that
7 I'm not confused. Do you recall, sir, in this agreement that
8 you and the government have agreed to a stipulated guidelines
9 range of 151 to 188 months' imprisonment?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you recall that in this agreement you
12 have agreed not to appeal or otherwise litigate a sentence that
13 is within or below that 151- to 188-month range?

14 THE DEFENDANT: Yes.

15 THE COURT: Sir, have you had enough time to review
16 the agreement, to go over it with Mr. Dratel, and to have all
17 of your questions answered?

18 THE DEFENDANT: Yes.

19 THE COURT: I'm holding up the original of the
20 agreement and turning to the last page. Is that your
21 signature, sir, over there on the left-hand side, where I'm
22 pointing, under the words "Agreed and consented to"?

23 THE DEFENDANT: Yes.

24 THE COURT: Am I correct that your willingness to
25 offer to plead guilty is in part a result of this agreement

1 between you and the government?

2 THE DEFENDANT: Yes.

3 THE COURT: Counsel, are there any additional
4 agreements between the defendant and the government that are
5 not set forth in the written plea agreement?

6 MR. TEHRANI: No, your Honor.

7 MR. DRATEL: No, your Honor. Obviously, there are
8 other terms that Mr. Tehrani didn't reach in summarizing, but
9 they are in the document.

10 THE COURT: Yes, sir. Thank you. Very well, the
11 agreement is acceptable to the Court.

12 Mr. Henderson, have you been induced to offer to plead
13 guilty as a result of any fear, pressure, force of any kind?

14 THE DEFENDANT: No.

15 THE COURT: Have you been induced to offer to plead
16 guilty as a result of any statements by anyone other than in
17 your written plea agreement to the effect that you would get
18 special treatment or special leniency or some kind of special
19 consideration if you pleaded guilty rather than going to trial?

20 THE DEFENDANT: No.

21 THE COURT: Do you understand that you have the right
22 to continue in your plea of not guilty and proceed to trial?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that if you do not plead
25 guilty, you have a right to a speedy and public trial by a jury

1 of 12 persons?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand that you have the right
4 to be represented by an attorney at trial and at every stage of
5 the proceedings, including an appeal, and if you cannot afford
6 an attorney, one will be appointed to represent you free of
7 charge?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if your plea of
10 guilty is accepted, there will be no further trial of any kind?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that if you pleaded not
13 guilty and went to trial, upon such a trial you would be
14 presumed innocent unless and until the government proved your
15 guilt beyond a reasonable doubt to all 12 jurors?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that at such a trial you
18 would have the right to confront and cross-examine all of the
19 witnesses called by the government against you?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that at such a trial you
22 could remain silent and no inference could be drawn against you
23 by reason of your silence or, if you wanted to, you could take
24 the stand and testify in your own defense?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that at such a trial you
2 would have the right to subpoena witnesses and evidence for
3 your own defense?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that if your offer to
6 plead guilty is accepted, you give up these rights with respect
7 to that charge against you and the Court may impose sentence
8 just as though a jury had brought in a verdict of guilty
9 against you?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if you wanted to
12 and if the government agreed, you could have a trial before a
13 judge without a jury, in which event the burden of proof would
14 still be on the government and you would still have the same
15 constitutional rights?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand, sir, that upon your
18 plea of guilty to Count One, the Court has the power to impose
19 upon you a maximum sentence of 20 years' imprisonment, a
20 maximum fine of the greatest of \$1 million, twice the gross
21 pecuniary gain derived from the offense or twice the gross
22 pecuniary loss resulting from the offense, a maximum period of
23 supervised release of life, a mandatory minimum period of
24 supervised release of 3 years, and a mandatory \$100 special
25 assessment?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand, sir, that upon
3 your plea of guilty to Count One, in addition to the other
4 punishments I just mentioned, the Court must order you to make
5 restitution?

6 THE DEFENDANT: Yes.

7 THE COURT: Sir, do you also understand that if the
8 terms and conditions of supervised release are violated, you
9 may be required to serve an additional period of imprisonment
10 which is equal to the period of supervised release with no
11 credit or time off for time already spent on supervised
12 release?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you discussed the sentencing
15 guidelines with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that the Court will not
18 be able to determine exactly what guideline applies to your
19 case until after a pre-sentence report has been concluded and
20 you and Mr. Dratel and the government have had a chance to read
21 it and to challenge the facts that are set out there by the
22 probation officer?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand also that in determining
25 a sentence, it is the Court's obligation to calculate the

1 applicable sentencing guidelines range and then to consider
2 that range, possible departures from that range under the
3 guidelines, and other sentencing factors set out in the statute
4 18 United States Code section 3553(a)?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that under some
7 circumstances, as set forth in your plea agreement, you or the
8 government might have the right to appeal whatever sentence is
9 imposed?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you also understand that parole has
12 been abolished, so if you are sentenced to prison, you will not
13 be released on parole?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you will not be
16 able to withdraw your plea on the ground that your lawyer's
17 prediction or anybody else's prediction as to the applicable
18 sentencing guidelines range or as to the actual sentence turns
19 out not to be correct?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that the offense to
22 which you are pleading guilty is a felony?

23 THE DEFENDANT: Yes.

24 THE COURT: Sir, are you fully satisfied with the
25 advice, counsel, and representation given to you by your

1 attorney, Mr. Dratel?

2 THE DEFENDANT: Yes.

3 THE COURT: Do I correctly understand that you are
4 offering to plead guilty because you are in fact guilty?

5 THE DEFENDANT: Yes.

6 THE COURT: If you wish to plead guilty, sir, I'm
7 going to ask you to tell me what you did. As you can see, your
8 answers will be made in Mr. Dratel's presence and your answers
9 will be recorded on the record. I remind you also that you are
10 still under oath, so if you answer falsely, your answers may
11 later be used against you. Do you understand, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you still wish to plead guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Tell me what you did, Mr. Henderson.

16 THE DEFENDANT: I conspired with others to sell crack
17 cocaine.

18 THE COURT: When was that, sir?

19 THE DEFENDANT: 2011, 2012.

20 THE COURT: Where did that take place?

21 THE DEFENDANT: It took place in the Bronx, 143rd
22 Street and Morris Avenue.

23 THE COURT: You understood that that was unlawful,
24 right?

25 THE DEFENDANT: Yes.

1 THE COURT: Thank you.

2 Mr. Tehrani, does the government represent that it has
3 sufficient evidence to make a prima facie case?

4 MR. TEHRANI: Yes, your Honor.

5 THE COURT: Mr. Dratel, do you know of any valid legal
6 defense that would prevail if Mr. Henderson went to trial?

7 MR. DRATEL: No, your Honor.

8 THE COURT: Do you know of any reason why he should
9 not plead guilty?

10 MR. DRATEL: No, your Honor.

11 THE COURT: Very well. The plea is accepted. It is
12 finding of the Court in the case of United States against Kevin
13 Henderson that the defendant is fully competent and capable of
14 entering an informed plea and that his plea of guilty is
15 knowing and voluntary and is supported by an independent basis
16 in fact containing each and every essential element of the
17 offense. My findings are based upon Mr. Henderson's allocution
18 and, in addition, upon my observations of him here in court
19 today.

20 The plea of not guilty is withdrawn. The plea of
21 guilty is accepted and shall be entered. The defendant is now
22 adjudged to be guilty of the offense.

23 Mr. Henderson, as you know, you will be required to
24 meet with the probation officer and to give the officer certain
25 information to be included in the pre-sentence report. Mr.

1 Dratel may be present with you when you meet with the probation
2 officer if you want, but certainly both you and he and the
3 government will have a chance to read the pre-sentence report
4 prior to sentencing.

5 Sentencing will be on October 21 at 11:30.

6 MR. DRATEL: Your Honor, I don't think it matters
7 anymore, but I would like to be present for the pre-sentence
8 interview.

9 THE COURT: Yes, sir.

10 Is there anything else today, gentlemen?

11 MR. TEHRANI: Nothing for the government. Thank you,
12 your Honor.

13 MR. DRATEL: Nothing, your Honor. Thank you.

14 THE COURT: Thank you, gents. Good afternoon.

15 (Adjourned)
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